IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN

AT JAIPUR BENCH, JAIPUR

O R D E R

S.B. Civil Second Appeal No.380 Of 1997.

Shiv Shankar Vs. Mst. Mishri Devi (since deceased) through her LRs. Pyare Lal & Others

Date Of Order ::: 08.11.2006.

Hon'ble Mr. Narendra Kumar Jain J.

Mr. M.M. Ranjan, Counsel for defendant-appellant.
Mr. Amin Ali, Counsel for plaintiff-respondents

By the Court :

Heard learned counsel for both the parties.

The plaintiff-respondents filed a suit for mandatory injunction, which was decreed by the Lower Court. The judgment and decree passed by the Lower Court has been affirmed by the First Appellate Court also.

During the pendency of the second appeal, the appellant has filed an application under Order 41 Rule 27 of the C.P.C., alongwith certain documents, which

are neither original nor certified copies. The appellant has not given any satisfactory reasons as to why these documents were not produced before the Lower Court or the Lower Appellate Court. After considering the submissions of learned counsel for both the parties, I am not inclined to allow the application filed under Order 41 Rule 27 of the C.P.C., and the same is hereby dismissed.

I have considered the submissions of learned counsel for both the parties on merits of the case in the light of the findings of both the Courts below.

The main grievance of the learned counsel for the defendant-appellant was in respect of the limitation in filing the suit as well as plea regarding adverse possession. Issue relating to the limitation was decided by the Lower Court against the defendant-appellant. Thereafter, the finding of the Lower Court in respect of the Limitation was not pressed by the defendant before the First Appellate Court. So far as the question of adverse possession is concerned, the Courts below have recorded a concurrent finding in this regard in favour of the plaintiff-respondents.

After considering the submissions of learned

counsel for both the parties as well as the findings of both the Courts below, I am satisfied that there is no illegality or perversity in the judgments and decrees passed by both the Courts below. The question involved in the present case are relating to the question of facts and there is a concurrent finding of fact recorded by both the Courts below, which cannot be interfered with by this Court in second appeal under Section 100 of the C.P.C.

No substantial question of law is involved in this second appeal and the same is accordingly dismissed at the admission stage itself with no order as to costs.

(Narendra Kumar Jain) J.

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